

JUDICIAL PROCEEDINGS

Civil Action by the United States

SOURCE: Sections 70.191 through 70.193 added by T.D. ATF-301, 55 FR 47633, Nov. 14, 1990.

§ 70.191 Authorization.

(a) *In general.* No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture (with respect to the provisions of 26 U.S.C. enforced and administered by the Bureau) shall be commenced unless the Director, Bureau of Alcohol, Tobacco and Firearms, or designated delegate, or the Chief Counsel for the Bureau, or designated delegate, directs that the action be commenced.

(b) *Property held by banks.* The Director shall not authorize or sanction any civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, from any deposits held in a foreign office of a bank engaged in the banking business in the United States or a possession of the United States unless the Director believes:

(1) That the taxpayer is within the jurisdiction of a U.S. court at the time the civil action is authorized or sanctioned and that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States; or

(2) That the taxpayer is not within the jurisdiction of a U.S. court at the time the civil action is authorized or sanctioned, that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States, and that such deposits consist, in whole or in part, of funds transferred from the United States or a possession of the United States in order to hinder or delay the collection of a tax imposed by the provisions of 26 U.S.C. enforced and administered by the Bureau.

(26 U.S.C. 7401)

§ 70.192 Action to enforce lien or to subject property to payment of tax.

(a) *Civil actions.* In any case where there has been a refusal or neglect to pay any tax (with respect to the provi-

sions of 26 U.S.C. enforced and administered by the Bureau) or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or designated delegate at the request of the Director, Bureau of Alcohol, Tobacco and Firearms, or the Chief Counsel for the Bureau or designated delegate, may direct a civil action to be filed in any court of the United States to enforce the lien of the United States under the Internal Revenue Code with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which the delinquent has any right, title or interest, to the payment of such tax or liability. In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Director or the Chief Counsel for the Bureau during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity.

(b) *Bid by the United States.* If property is sold to satisfy a first lien held by the United States, the United States may bid at the sale a sum which does not exceed the amount of its lien and the expenses of the sale. See also 31 U.S.C. 3715.

(26 U.S.C. 7403)

§ 70.193 Disposition of judgments and moneys recovered.

All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties (with respect to the provisions of 26 U.S.C. enforced and administered by the Bureau) shall be paid to the Bureau as collections of taxes imposed under the provisions of 26 U.S.C. enforced and administered by the Bureau.

(26 U.S.C. 7406)

Proceedings by Taxpayers and Third Parties

SOURCE: Sections 70.202 through 70.213 added by T.D. ATF-301, 55 FR 47634, Nov. 14, 1990.

§ 70.202 Intervention.

If the United States is not a party to a civil action or suit, the United States

may intervene in such action or suit to assert any lien arising under provisions of 26 U.S.C. enforced and administered by the Bureau on the property which is the subject of such action or suit. The provisions of 28 U.S.C. 2410 (except subsection (b)) and of 28 U.S.C. 1444 shall apply in any case in which the United States intervenes as if the United States had originally been named a defendant in such action or suit. If the application of the United States to intervene is denied, the adjudication in such civil action or suit shall have no effect upon such lien.

(26 U.S.C. 7424)

§ 70.203 Discharge of liens; scope and application; judicial proceedings.

(a) *In general.* A tax lien of the United States, or a title derived from the enforcement of a tax lien of the United States, may be discharged or divested under local law only in the manner prescribed in 28 U.S.C. 2410 or in the manner prescribed in 26 U.S.C. 7425. Title 26 U.S.C. 7425(a) contains provisions relating to the discharge of a lien when the United States is not joined as a party in the judicial proceedings described in subsection (a) of 28 U.S.C. 2410. These judicial proceedings are plenary in nature and proceed on formal pleadings. Title 26 U.S.C. 7425(b) contains provisions relating to the discharge of a lien or a title derived from the enforcement of a lien in the event of a nonjudicial sale with respect to the property involved. Title 26 U.S.C. 7425(c) contains special rules relating to the notice of sale requirements contained in 26 U.S.C. 7425(b).

(b) *Judicial proceedings—(1) In general.* Title 26 U.S.C. 7425(a) provides rules, where the United States is not joined as a party, to determine the effect of a judgment in any civil action or suit described in subsection (a) of 28 U.S.C. 2410 (relating to joinder of the United States in certain proceedings), or a judicial sale pursuant to such a judgment, with respect to property on which the United States has or claims a lien under the provisions of 26 U.S.C. If the United States is improperly named as a party to a judicial proceeding, the effect is the same as if the United States were not joined.

(2) *Notice of lien filed when the proceeding is commenced.* Where the United States is not properly joined as a party in the court proceeding and a notice of lien has been filed in accordance with 26 U.S.C. 6323(f) or (g) in the place provided by law for such filing at the time the action or suit is commenced, a judgment or judicial sale pursuant to such a judgment shall be made subject to and without disturbing the lien of the United States.

(3) *Notice of lien not filed when the proceeding is commenced.* Where the United States is not joined as a party in the court proceeding and either a notice of lien has not been filed in accordance with 26 U.S.C. 6323(f) or (g) in the place provided by law for such filing at the time the action or suit is commenced, or the law makes no provision for that filing, a judgment or judicial sale pursuant to such a judgment shall have the same effect with respect to the discharge or divestment of the lien of the United States as may be provided with respect to these matters by the local law of the place where the property is situated.

(4) *Proceeds of a judicial sale.* If a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a lien of the United States arising under the provisions of 26 U.S.C., the United States may claim the proceeds of the sale (exclusive of costs) prior to the time that distribution of the proceeds is ordered. The claim of the United States in such a case is treated as having the same priority with respect to the proceeds as the lien had with respect to the property which was discharged from the lien by the judicial sale.

(26 U.S.C. 7425(a))

§ 70.204 Discharge of liens; nonjudicial sales.

(a) *In general.* Title 26 U.S.C. 7425(b) contains provisions with respect to the effect on the interest of the United States in property in which the United States has or claims a lien, or a title derived from the enforcement of a lien, of a sale made pursuant to:

(1) An instrument creating a lien on the property sold.